

Exhibit 5

HIGHLY CONFIDENTIAL

EXPERT REPORT OF RICHARD D. KAHLENBERG

Students for Fair Admissions v. United States Naval Academy

No. 1:23-cv-02699

United States District Court for the District of Maryland Northern Division

July 15, 2024

B. Experience at the U.S. Coast Guard shows that race-neutral alternatives can be workable at selective military academies.

The Coast Guard Academy provides further evidence that race-neutral alternatives can be effective. Until the fall of 2010 (which included admission to the class of 2014), the Coast Guard was prohibited by statute from using race in admissions.³⁴ And yet it took substantial steps to employ race-neutral tools, a fact the U.S. Solicitor general pointed to in the early 2000s.³⁵ The Coast Guard Academy was able to boost diversity over time despite the selectivity of its campus. (In the class of 2014, only 18% of applicants were admitted.)³⁶

The progress over time was considerable. In the class of 2009, only 24 of 225 students (10.7%) were members of racial minority groups.³⁷ By the class of 2013, that share had risen to 44 of 288 students (15.3%). That share grew to 24% in the class of 2014, which was admitted under race-neutral standards.³⁸

How did the Coast Guard significantly increase diversity over a short period of time without racial preferences? Significantly, the Coast Guard Academy doubled its recruitment budget. It advertised in outlets such as Black Entertainment Television, and hosted minority applicants on campus.³⁹ The Coast Guard Academy created new relationships with predominantly Black institutions. It also increased its admissions of enlisted members (who

³⁴ Jennifer McDermott, “Ethnicity, gender now factor in CGA admissions,” The Day of New London, January 22, 2011.

³⁵ *Grutter v. Bollinger*, Supreme Court Oral Argument Transcript 19-22, available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2002/02-241.pdf.

³⁶ McDermott, “Ethnicity, gender now factor in CGA admissions” (noting only 400 students were accepted of 2,200 who applied).

³⁷ Hearings Before the Subcommittee on Coast Guard and Maritime Transportation, June 19, 2009, <https://www.govinfo.gov/content/pkg/CHRG-111hhrg50631/html/CHRG-111hhrg50631.htm>

³⁸ McDermott, “Ethnicity, gender now factor in CGA admissions,” SFFA-USNA-000146; *see also* Jennifer McDermott, “Coast Guard Cadet Diversity Surges With Minority Wave,” *Diverse Issues in Higher Education*, July 5, 2010, SFFA-USNA-000275.

³⁹ McDermott, “Ethnicity, gender now factor in CGA admissions.”

were disproportionately members of minority groups) and emphasized programs to boost the academic skills of students through Coast Guard's prep academy.⁴⁰

C. Academic research shows that selective universities can employ effective race-neutral strategies.

In the wake of Supreme Court rulings on affirmative action, think tanks and the academic community have been examining in earnest the use of race-neutral strategies to promote racial, ethnic, and socioeconomic diversity on campuses. For example, in 2014, the Lumina Foundation produced a 299-page volume (which I edited) that brought together both supporters and skeptics of racial preferences to consider the meaning of the Supreme Court's rulings in *Fisher v. Texas* and to examine the efficacy of race-neutral strategies.⁴¹ The College Board's Access and Diversity Collaborative produced papers on race-neutral policies, including "The Playbook: A Guide to Assist Institutions of Higher Education in Evaluating Race-and Ethnicity-Neutral Policies in Support of the Mission-Related Diversity Goals."⁴² The American Council on Education surveyed 338 colleges on their use of race-neutral strategies.⁴³

After the Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard*, the interest and research on race-neutral alternatives intensified. For example, in September 2023,

⁴⁰ Hearings Before the Subcommittee on Coast Guard and Maritime Transportation, June 19, 2009.

⁴¹ Kahlenberg (ed), *The Future of Affirmative Action*, *supra*.

⁴² See, e.g., Arthur L. Coleman, Teresa E. Taylor, & Katherine E. Lipper, "The Playbook: A Guide to Assist Institutions of Higher Education in Evaluating Race- and Ethnicity-Neutral Policies in Support of the Mission-Related Diversity Goals," *College Board and Education Counsel*, October 2014, [http://educationcounsel.com/wp-content/uploads/2015/06/ADC%20Playbook%20October%202014%20\(for%20posting%20to%20website\).pdf](http://educationcounsel.com/wp-content/uploads/2015/06/ADC%20Playbook%20October%202014%20(for%20posting%20to%20website).pdf).

⁴³ Lorelle L. Espinosa, Matthew N. Gaertner, & Gary Orfield, "Race, Class, and College Access: Achieving Diversity in a Shifting Legal Landscape" *American Council on Education*, 2015, <http://www.acenet.edu/news-room/Documents/Race-Class-and-College-Access-Achieving-Diversity-in-a-Shifting-Legal-Landscape.pdf>.